IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 232 OF 2006

Shankar S. Karkera.] .. Petitioner

Versus

1. The Municipal Commissioner,Municipal Corpn. of Gr. Mumbai and 2 ors.] .. Respondents

Mr. S.P. Saxena for the petitioner.

Mrs. Shobha Ajitkumar for the respondent No.1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 19TH APRIL, 2006

P.C. :

. Petitioner has invoked the provisions of Article 226 of the Constitution of India and prayed to direct respondent No.1 to grant a full reimbursement of the balance amount of medical expenses of Rs.1,45,752/- incurred on the treatment of his wife late Komal Shankar Karkera who was working as a staff nurse with respondent No.3, as respondents have restricted the medical reimbursement only to Rs.45,000/- even though petitioner submitted the claim of Rs.1,90,752/-. Petitioner, being the husband, has averred that his wife (Komal) had completed 30 years of service as a permanent employee of

the Municipal Corporation of Greater Mumbai - respondent No.1. She was suffering from heart ailment and advised medically to undergo by-pass heart surgery (CADGS) on the basis of Angiography done at Bombay Hospital on 9th August, 2004. There was an emergency on 15th August, 2004, and she had to be hospitalised in the Holy Family Heart Institute & Holy Family Hospital at Bandra, being the nearest hospital as there was no sufficient time for the petitioner to admit her in Bombay Hospital or such other registered/ authorised hospital as per the Revised Medical Scheme of respondent No.1. The said hospital has specialised facilities for heart patients which includes heart surgery. The petitioner's wife was admitted on 15th August, 2004, for an operation. On 16th August, 2004, by-pass surgery was performed. However, she expired in the hospital on 17th August, 2004. The petitioner, by raising loan on emergency basis, paid the bill of the hospital towards the expenses of medicines, hospitalisation Rs.19,656/- and Rs.1,71,056/- at Holy Family Hospital, totalling to Rs.1,90,752/-.

2. The petitioner's wife being respondent No.1's employee, was entitled for a free medical treatment as a condition of her service. The petitioner, therefore, submitted a claim for reimbursement of medical expenses

incurred by him for the treatment, including of the by-pass surgery of his deceased wife through proper Channel to Respondent No.1, on 16th December, 2004, alongwith all necessary documents and Certificates. Respondent No.2 has sanctioned an amount of Rs.45,000/- only, without giving any valid reasons and, therefore, the present Petition.

3. Heard the counsel appearing for the parties. There is no dispute on the above facts. The learned counsel appearing for the respondents orally submitted that based on the Medical Health Scheme of respondent No.1, dated 24th August, 1996, the maximum amount of Rs.45,000/- has been sanctioned. The case of the petitioner’s wife has been considered in accordance with the existing Scheme, as referred above. The action of the respondents in restricting the reimbursement only to Rs.45,000/- as against medical bill of Rs.1,90,752/-, therefore, is within the framework of law and facts. There was no denial to the reimbursement only because she was hospitalised in the hospital other than the prescribed hospital as per the Scheme. We have gone through the Scheme with the assistance of the counsel appearing for the parties.

4. There is no rejoinder or denial to the Medical

Scheme. There is no challenge made to the Medical Scheme in question. However, the learned counsel for the parties has relied on **Pt. Parmanand Katara Vs. Union of India & ors., AIR 1989, S.C., 2039** that if an injured citizen is brought for medical treatment, the medical aid and treatment should be given instantaneously without any procedural hurdle. Therefore, as there was emergency, the petitioner had no choice, but to hospitalise his wife for the heart surgery in the hospital, other than prescribed one. Therefore, this case is of no assistance to the petitioner to claim the full amount.

5. He further relied on **Surjit Singh Vs. State of Punjab & ors., AIR 1996, S.C., 1388** to support his contention that the Government cannot insist for an employee to get himself treated at recognised Government Hospitals and claim rates prevailing there. He strongly relied on paragraph 8, the extracted portion of which reads as under:

> ". The policy, providing recognition for treatment of open heart surgery in the Escorts, specifically came to be examined by a Division Bench of the Punjab and Haryana High Court at Chandigarh in C.W.P.no.13493 of 1992 titled as Asdhu R. Pall v. State of Punjab through Secretary Health and Family Welfare Punjab Civil, Secretariat, Chandigarh and others decided on 6-10-1993, wherein the claim of the then writ petitioner to medical

> reimbursement was accepted when in order to save his life he had got himself operated upon in the Escorts, and the plea of the State that he could be paid rates as prevalent in the AIIMS was rejected. Special Leave Petition No.22024 of 1995 against the said decision was dismissed by this Court on 2-2-1994."

This is also not a case where maximum amount was prescribed under the Revised Medical Scheme as per the case in hand. In the present case, as submitted the maximum amount has been reimbursed. The refusal of full reimbursement in the present case, therefore, was within the prescribed rule of the Vaidyakiya Madat Yojna (Scheme). Therefore, this case is also distinct and distinguishable.

6. In **State of Punjab & Ors. Vs. Mohinder Singh Chawla etc., S.C. Service Law Judgments, 204,** the Apex Court has observed that an employee is entitled to room rent charges during the stay in the hospital as an in-patient. Room rent charges for staying in hospital are an integral part for medical treatment. There is no such dispute in the present case.

7. Relying on **Smt. Gouri Sengupta Vs. State of Assam, 2000 (1) Administrative Total Judgments, Pg.582 (Guwahati High Court)**, he submitted that the medical expenses cannot be denied on the ground that the

petitioner got the treatment in a private Nursing Home which was recognised by the Government. In the present case, the respondents have considered and granted the reimbursement to the maximum extent as per the Scheme. He further relied on **S.P. Kapur Vs. Union of India, 2000 (1) Administrative Total Judgments, Page 654 (Delhi High Court)**. In this case also, the Delhi High Court refused to grant full reimbursement and allowed the Petition partly.

8. All these judgments, as relied, are distinct and distinguishable on facts. There was no case of restriction of payment as per the prescribed Scheme in those cases. In the present case, the respondents have considered the claim of the petitioner and paid the maximum amount of Rs.45,000/- as per the Scheme without raising any objection as considered in the above cited judgments. Therefore, there is no reason to consider the case of the petitioner based on the above judgments. There is no case made out of any malafide or arbitrariness. As there is no challenge made against this Medical Scheme, we find no illegality or any arbitrariness in awarding the maximum amount of Rs.45,000/- towards the medical claim to the petitioner. According to us, it is within the framework of the Scheme. However, the petitioner is at liberty to

re-apply in case a change or revised Scheme, if any, and the respondents to consider it in accordance with the revised Scheme and law.

9. For the above reasons, we see no merit in the Petition. It is dismissed accordingly with no order as to costs.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]